

5-39. State Primary Enforcement Responsibility under FIFRA**1. AUTHORITY.** To perform the functions and responsibilities under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) relative to:

- a. Making general determinations about states' pesticide use laws and plans pursuant to the FIFRA, including the determinations referenced in Sections 26(a) and (b);
- b. Executing primary enforcement responsibility for pesticide use violations in states that do not have primary enforcement responsibility for pesticide use violations, in accordance with FIFRA, including Section 26(c);
- c. Referring any complaint or other information to the appropriate state officials for investigation, and acting upon the complaint or information if authorized, pursuant to the authority in FIFRA, including Section 27(a);
- d. Making the determination that EPA should execute primary enforcement responsibility for any FIFRA violations where emergency conditions exist that require immediate action and the state authority is unwilling or unable adequately to respond to the emergency, in accordance with the authority in FIFRA, including Section 27(c);
- e. Making a determination to rescind, and providing, withdrawing, reissuing, modifying and publishing notice of intent to rescind state primary enforcement responsibility for pesticide use violations in accordance with FIFRA, including FIFRA Section 27(b) and 40 C.F.R. Part 173; and
- f. Scheduling a hearing, appointing a presiding officer to preside over such hearing and to make a recommended decision, and prescribing additional procedures governing the conduct of the hearing after consultation with the State, as authorized by FIFRA, including 40 C.F.R. Part 173.

2. TO WHOM DELEGATED.

- a. The authorities stated above in sections 1.a., 1.b., 1.c., and 1.d., and 1.f. are delegated to the Director, Enforcement and Compliance Assurance Division (ECAD); and Chief, Air, RCRA and Toxics Branch, ECAD.
- b. The authorities in 1.e. and 1.f. are delegated to the Director, Land, Chemicals and Redevelopment Division (LCRD).
- c. 1.a. is delegated to the Chief, Chemicals Safety Program Branch, LCRD.

5-39. State Primary Enforcement Responsibility under FIFRA (continued)**3. LIMITATIONS.**

- a. Prior to exercising the authorities in sections 1.a., 1.b., 1.c., and 1.d. above, the Assistant Administrator for the Office of Enforcement and Compliance Assurance (AA/OECA) must notify the affected Regional Administrator.
- b. Prior to exercising the authorities in 1.e. and 1.f. above, the delegates must obtain concurrence from the AA/OECA.

4. REDELEGATION AUTHORITY.

- a. The authorities stated above in sections 1.a., 1.b., 1.c., and 1.d. may be redelegated to the branch chief level, and no further.
- b. The authorities stated above in sections 1.e., and 1.f. may be redelegated to the branch chief level and no further.
- c. These authorities may not be redelegated without formal amendment.
- d. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.

5. ADDITIONAL REFERENCES.

- a. FIFRA sections 26 and 27.
- b. 40 C.F.R. part 173, Procedures Governing the Rescission of State Primary Enforcement Responsibility for Pesticide Use Violations.
- c. 48 Fed. Reg. 404 (Jan. 5, 1983), Federal Insecticide, Fungicide, and Rodenticide Act, State Primary Enforcement Responsibilities (Final Interpretive Rule).

6. SUPERSESSION. Delegations Manual, FIFRA, Regional Delegation 5-39, State Primary Enforcement Responsibility under FIFRA, 1200 TN RIII 197 (April 27, 2017).Date: APR 15 2019
Cosmo Servidio
Regional Administrator